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Single Bench

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH
AT BILASPUR

CRIMINAL REVISION NO. 150 /2006

APPLICANTS
(IN JAIL)

1) Kumari Chandrakar ,
W/o Mohan Chandrakar ,
Aged about- 40years,
2) Mohan Kumar Chandrakar
S/o Punau Chandrakar
Aged about- 42 years
3) Shyama Bai W/o Punau
Ram Chandrakar Aged
about-60 years,
4) Rajesh Chandrakar
S/o Punau Chandrakar
Aged about- 28 years

All are R/o Ramsagar Para,
Raipur,District Raipur(C.G.)

Filed on 01/12/06
by Shri Advocate
29/12/06
R to D.R.(J)

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VERSUS

RESPONDENT

State of Chhattisgarh
Through: Station House Officer,
Police Station- Mahila Police
Station, Raipur
Distt- Raipur (C.G.)

MEMO OF REVISION UNDER SECTION 397 READ WITH
SECTION 401 OF CRPC AGAINST CONVICTION

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A.F.R.
13.7.06

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Revision No.158/2006

Kumari Chandrakar and three others

Vs.

State of Chhattisgarh

Post for Orders : 13.07.2006

Sd-/
Dilip Raosaheb Deshmukh
Judge

(45)

A.F.R. 13.7.06

HIGH COURT OF CHHATTISGARH AT BILASPUR

Before: Hon'ble Shri Justice Dilip Raosaheb Deshmukh

Criminal Revision No.150/2006

Kumari Chandrakar and three others

Vs.

State of Chhattisgarh

Shri Y.C.Sharma, Counsel with Shri V. Rathore for the applicants.
Shri Parag Kotecha, P.L. for the State.

O R D E R

(Passed on this 13th day of July 2006)

This criminal revision arises out of the judgment dated 27.2.2006 delivered by Shri N.D.Tigala, 9th Additional Sessions Judge, Raipur in Criminal Appeal No.274/2005 whereby conviction of the applicants under Section 498-A read with Section 34 of the I.P.C. and the sentence of R.I. for six months and a fine of Rs.300/- as awarded by Shri Kartikram, J.M.F.C. Raipur in Criminal Case No.308/2001 was affirmed.

2. It is not disputed that Shakun Chandrakar was married to applicant No.4-Rajesh Chandrakar on 5.5.2001. Their matrimonial home was at Chuikhadan. The applicant No.3-Shyama Bai is the mother-in-law of Shakun Chandrakar. Applicant No.2-Mohan Chandrakar is the brother of applicant No.4-Rajesh Chandrakar and applicant No.1-Kumari Chandrakar is the wife of applicant No.2.

3. Brief facts are that Shakun Chandrakar lodged F.I.R. on 18.10.2001 in Mahila Police Station that on her wedding night her husband applicant No.4 mentally tortured her by saying that he did

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brother's choice. Thereafter, the applicants started harassing Shakun Bai at Chuikhadan on account of demand for money, a golden chain and a vehicle. After facing persistent harassment for a period of one and half months at her matrimonial home at the hands of the applicants, Shakun Bai returned to her maternal home. Thereafter, she again returned after a period of 2 - 4 days to her matrimonial home. After the *Teeja* festival she lived with the applicant No.4 at Ramsagar Para, Raipur where she was persistently harassed by all the applicants on account of demand for dowry. On 15th August her husband, the applicant no.4, chased her while attempting to assault her by an axe due to which she returned to her maternal home again. On 18.10.2001 at about 9.00 A.M. when she went to her matrimonial home for bringing her sewing machine at Ramsagar Para, Raipur, Mohan, the applicant No.2 caught hold of her hand and his wife, applicant No.1, quarrelled with her.

4. After completion of investigation the applicants were prosecuted under Section 498-A of the I.P.C. The applicants abjured their guilt, pleaded false implication and led no evidence in defence. The prosecution examined Shakun Chandrakar P.W.1, her mother Champa Bai as P.W.2, her brother Umesh as P.W.3 and Rakesh, a friend of Umesh as P.W.4. Relying upon the evidence led by the prosecution, the learned trial Judge convicted and sentenced the applicants as aforesaid in paragraph 1. On appeal, conviction and sentence awarded by the learned trial Judge was affirmed.

5. Shri Y.C.Sharma, learned counsel for the applicants while assailing the impugned judgment made three-fold submission in this revision. Firstly, he contended that there was absolutely no evidence against Mohan, applicant No.2 who was the brother of the applicant No.4. Secondly, it was contended that mere omnibus allegations

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against the applicants No.1, 3 & 4 were not sufficient to hold the applicants guilty under Section 498-A read with Section 34 of the I.P.C. Lastly, it was submitted that the learned trial Court did not have jurisdiction to hear the criminal case since cruelty as alleged, was committed at Chuikhadan which was beyond the territorial jurisdiction of the trial Court at Raipur. Reliance was placed in *Ramesh and others v. State of Tamil Nadu* **A.I.R.2005 SC 1989** and *Y. Abraham Ajith and others v. Inspector of Police, Chennai and another* **A.I.R. 2004 SCW 4788**. On the other hand, Shri Parag Kotecha, learned Panel Lawyer for the State has argued in support of the impugned judgment while contending that there is clinching evidence to prove the guilt of the applicants for an offence under Section 498-A read with Section 34 of the I.P.C. and since the evidence clearly revealed that some part of the cruelty on account of demand for dowry was also committed by the applicants at Ramsagar Para, Raipur, the learned trial Court had jurisdiction to try the case.

6. Having heard the rival submissions, I have perused the record of Criminal Case No.308/2001. I shall first deal with the objection raised by the learned counsel for the applicants as regards jurisdiction of the trial Court to try the offence in question. Section 177 Cr.P.C. lays down that every offence shall ordinarily be inquired into and tried by a Court within whose jurisdiction it was committed. Section 178 Cr.P.C. further lays down that when it is uncertain in which part of several local areas an offence was committed or where an offence was committed partly in one local area and partly in another, or where an offence is a continuing one and continues to be committed in more local areas than one, or where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

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Section 178-(b) speaks of cases where an offence is committed partly in one area and partly in another. In such a case the Courts having jurisdiction in both the areas have got territorial jurisdiction to take cognizance of such an offence. Applying the aforesaid principle to the facts of the present case, written F.I.R. Ex.P.1 lodged by Shakun Chandrakar clearly shows that she had alleged that she was not only harassed by the applicants on account of a demand for dowry at Chuikhadan but was also harassed on account of demand for dowry by the applicants in Ramasagar Para, Raipur, where she stayed for 15 days. Thus, material produced by the prosecution clearly revealed that the alleged offence of harassment of Shakun Chandrakar on account of a demand for dowry was also committed by the applicants not only in her matrimonial home at Chuikhadan but also in Ramsagar Para, Raipur. In this view of the matter, since the offence alleged was committed partly in one local area and partly in another, it could be tried by any Court having jurisdiction to try the offences alleged against the applicants. The case law cited by the learned counsel for the applicants are clearly distinguishable. In **Ramesh and others** (supra), it was held that where most of the acts of cruelty to wife and demand for dowry were committed at two different places, the Court at the third place where the wife was residing with her parents had no jurisdiction to try the offence. In **Y.Abraham Ajith and others** (supra) also, the complainant left her husband's place and went to reside at another place where a demand for dowry or commission of any act constituting an offence was not alleged, therefore, it was held that the Court situated at such a place had no jurisdiction to try the offence under Section 498-A and 406 I.P.C. In this view of the matter, the objection as to jurisdiction of the learned trial Court as

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raised by the learned counsel for the applicants does not have any force and is liable to be rejected.

7. Shakun Chandrakar P.W.1 has stated that she was married to the applicant No.4-Rajesh Chandrakar on 5th May 2001 at Chuikhadan and since that day she was residing at Chuikhadan for a period of one month. In paragraph 3 she has stated that after her marriage her husband told her on the wedding night that he did not like her since she was of her brother's choice. Thereafter, an omnibus allegation has been made by Shakun Chandrakar that her mother-in-law Shyama Bai, applicant No.3, sister-in-law Kumari Chandrakar, applicant No.1 and her husband, applicant No.4 started beating her and made demand of a Car, golden chain and Rs.40,000/- as dowry. While making such statement she did not disclose the exact date, time and place when such a demand was made. It was also not stated how and in what manner was she beaten and whether she complained of such beating to anybody in the vicinity. She did not specifically state that her brother-in-law Mohan Kumar Chandrakar, applicant No.2 also used to beat her or demanded dowry.

8. In paragraph 9 of her testimony, Shakun Chandrakar P.W.1 has clearly stated that after her marriage she was living at her matrimonial home in Chuikhadan. In paragraph 10 she has admitted that applicant No.2-Mohan Chandrakar, her brother-in-law and applicant No.1-Kumari Chandrakar, her sister-in-law used to live in Ramsagar Para, Raipur. It is thus clear that Kumari Chandrakar and Mohan Chandrakar never lived with the applicant No.4-Rajesh at Chuikhadan i.e. the matrimonial home of Shakun Chandrakar. Her testimony in paragraph 5 that a week before lodging the F.I.R. when she went to Ramsagar Para, Raipur for bringing her sewing machine, Kumari Chandrakar and Mohan Chandrakar caught hold of her tuft of

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hair and assaulted her and refused to give the sewing machine to her is rendered untrustworthy since in the written report Ex.p.1 no such allegation was made.

9. Although in her F.I.R., Shakun Chandrakar had narrated that for 15 days she lived in the house at Ramsagar Para, Raipur, during which period she was harassed on account of a demand for money, yet in her evidence, she did not state that at Ramsagar Para applicant No.1-Kumari Chandrakar and applicant No.2-Mohan Chandrakar demanded money or harassed her on that account. So far as the demand of a golden chain is concerned, this allegation also does not appear to be plausible in view of the admission in paragraph 14 by Shakun Chandrakar that in her marriage her parents had given Sofa, Cooler, golden chain, ring, watch, golden *Mangalsutra* etc. as dowry. It does not appear plausible that the applicant No.1-Kumari Chandrakar and the applicant No.2-Mohan Chandrakar who did not live with the applicant No.4-Rajesh at Chuikhadan, would harass Shakun Chandrakar on account of a demand for dowry.

10. The conduct of Shakun Chandrakar also renders her testimony doubtful because she has admitted that during the period of 5 months after her marriage she did not make any report in any police station. It is also pertinent to note that Champa Bai P.W.2, mother of Shakun Chandrakar has not deposed in paragraph 2 that the applicant No.4-Rajesh i.e. the husband of Shakun, used to harass her on account of a demand of Rs.40,000/- and a Car as dowry. Her testimony that the applicants-Shyama Bai, Kumari and Mohan used to make a demand for Rs.40,000/- and a vehicle does not appear to be plausible since Mohan and Kumari did not live at all at Chuikhadan. In paragraph 3 she stated that on returning to her maternal home, Shakun had told her that her "*Sasuralwale*" used to harass her on account of a demand for

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Rs.40,000/-, a Car and a golden chain. However, here also she did not specifically narrate that the husband of Shakun Chandrakar i.e. applicant No.4-Rajesh used to harass Shakun Bai on account of demand for dowry. The testimony of Champa Bai P.W.2 is thus rendered doubtful. It is also rendered wholly untrustworthy since Umesh, brother of Shakun Bai, has stated in paragraph 5 that when Shakun returned to her maternal home soon after her wedding she did not tell about any demand for dowry or any harassment but stated that everything was normal.

11. Umesh P.W.3, brother of Shakun Chandrakar has stated that on visiting Chuikhadan with Shakun Chandrakar soon after her marriage, the applicant No.4-Rajesh had told him that he should ask his father to provide one Car, golden chain and Rs.40,000/- whereupon he had informed his father about the above mentioned demand but Radheshyam, father of Umesh, was not examined as a prosecution witness. Even Shakun P.W.1 did not state in her testimony that on visiting her matrimonial home with her brother Umesh, the applicant No.4-Rajesh had made the above mentioned demand of dowry.

12. The testimony of Rakesh P.W.4 also does not inspire confidence since he is a highly interested witness being a close friend of Umesh, the brother of Shakun Bai. His testimony that on visiting matrimonial home of Shakun Bai with Umesh, applicant No.4-Rajesh did not permit them to meet Shakun is also rendered wholly unreliable since no such statement was made either by Shakun Chandrakar or by Umesh P.W.3.

13. So far as the allegation relating to the attempted assault on Shakun Chandrakar by the applicant No.4 by a *Tangia* is concerned, it also does not inspire confidence since Umesh P.W.3 and Rakesh P.W.4 did not depose any such event. Umesh P.W.3 also did not state that Shakun Chandrakar had told any such incident to him. The testimony

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of Shakun that the applicant chased her to assault with a *Tangia* is rendered wholly unreliable since she has stated that there was no reason for any such act on the part of the applicant No.4-Rajesh. No witnesses of the locality in Chuikhadan where the applicant No.4 resided were examined to corroborate this fact. If the applicant No.4 had chased Shakun Chandrakar to assault with a *Tangia* on her, independent corroboration could have been available. No cogent reason was put-forth by Shakun Chandrakar or by Umesh for not lodging a report of the aforesaid incident for 7 days. Neither any injury is alleged to have been caused on the person of Shakun Chandrakar nor any independent witness was examined.

14. The testimony of Shakun Chandrakar clearly shows that her parents had given Sofa, Cooler, golden chain, ring and *Mangalsutra* etc. as dowry in marriage. Umesh P.W.3 has admitted in paragraph 4 that there was no demand of dowry before marriage since it was not permitted by the custom prevalent in their community. His testimony that on returning to her maternal home for the first time after wedding, Shakun Chandrakar did not complain of anything but told that everything was normal completely demolishes the prosecution story of harassment of Shakun Chandrakar on account of demand for dowry soon after her marriage to the applicant No.4.

15. The allegations made against Kumari Chandrakar and Mohan Chandrakar thus appear to be false since they did not live with Shakun Chandrakar at her matrimonial home at Chuikhadan but lived in Ramsagar Para, Raipur. The allegations levelled against them in paragraph 5 of the testimony of Shakun Chandrakar relating to holding of the tuft of her hair and assault by the applicant No.2 on her asking for sewing machine are also rendered untrustworthy since the above allegations did not find place in the written report. It thus

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cannot be ruled out that Shakun Chandrakar levelled a false allegation against the applicants relating to demand for dowry since her testimony in paragraph-11 that before her marriage the relatives of the applicant No.4 had demanded dowry which was prevalent in their community is rendered false due to the admission of Umesh P.W.3 in paragraph 4 which has been dealt with in paragraph 14 (supra).

16. Having thus considered the evidence led by the prosecution in its entirety, I am of the considered opinion that the prosecution has miserably failed to prove the ingredients of the offence under Section 498-A read with Section 34 of the I.P.C. against the applicants. Under *Explanation* (b) to Section 498-A I.P.C. cruelty means harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. The learned trial Judge and also the Appellate Court failed to notice the glaring discrepancies in the evidence led by the prosecution which render it wholly unreliable. Both the courts below failed to notice that the investigating officer had also not been examined by the prosecution. No independent witness residing in the vicinity of the matrimonial home of Shakun Bai was examined. They also did not notice that the testimony of Shakun Bai P.W.1 and Champa Bai P.W.2 relating to a demand for dowry soon after marriage was clearly rendered unworthy of credence in view of the admission made by Umesh in paragraphs 4 & 5 of his testimony. The glaring discrepancy regarding harassment by the applicants No.1 & 2 at Ramsagar Para, Raipur and the evidence of Shakun Bai was also ignored. Thus, there is no cogent, legal or reliable evidence on record to form the basis for convicting the applicant under Section 498-A read with Section 34

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I.P.C. Conviction of the applicants under Section 498-A read with Section 34 I.P.C. is thus wholly contrary to law and manifestly erroneous on the face of it and deserves to be set aside in exercise of the revisional jurisdiction.

17. In the result, this revision is allowed. The judgment dated 27.02.2006 passed in Criminal Appeal No. 274/2005 as also the judgment dated 1.10.2005 in Criminal Case No.308/2001 are set aside. The applicants are acquitted of the charge under Section 498-A read with Section 34 of the I.P.C. The applicant No.1-Kumari Chandrakar, applicant No.2-Mohan Chandrakar and applicant No.4-Rajesh Chandrakar shall be set at liberty forthwith, if not required in any other case.

Sd-/
Dilip Raosaheb Deshmukh
Judge